

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REBECCA COUSINEAU, individually on her	)	
own behalf and on behalf of all others similarly	)	No. 2:11-cv-01438-JCC
situated,	)	
	)	THIRD DECLARATION OF
Plaintiff,	)	CRISTINA DEL AMO CASADO
	)	(A) IN RESPONSE TO MOTION
v.	)	TO SEAL [DKT. 105] AND
	)	(B) IN SUPPORT OF REPLY ON
MICROSOFT CORPORATION, a Delaware	)	MOTION FOR SUMMARY
corporation,	)	JUDGMENT [DKT. 100]
	)	
Defendant.	)	
_____	)	

I, Cristina del Amo Casado, hereby declare as follows:

1. **Identity of Declarant.** I am employed by Microsoft Corporation (“Microsoft”) in Redmond, Washington, where I have worked since February 2006. My current position at Microsoft is Principal Program Manager, Windows Phone, a position I have held since October 2013. Before then, I was Senior Program Manager, Windows Phone. I have responsibility for the program management function for the Location Team (which developed location services features for Windows Phone 7), and I have had that responsibility since November 2010.
2. **Familiarity with Issues.** I have previously provided two Declarations in this matter, which I understand have been filed with the Court. Those Declarations explain my

1 background and familiarity with the issues in this litigation, the steps Microsoft takes to protect  
2 its confidential information, and the competitive issues associated with that information. Rather  
3 than repeat that discussion here, I incorporate it by reference.

#### 4 **RESPONSE TO MOTION TO SEAL**

5 3. ***Motion to Seal.*** I understand Plaintiff recently filed under seal copies of the  
6 following materials:

- 7 • Functional and design specifications for various aspects of Microsoft's Windows  
8 Phone 7 location services, including specifications for various aspects of the location  
9 framework for devices running Windows Phone 7 software. *See* Exs. A, B, C, D, E,  
10 F to the Balabanian Decl. [Dkt. Nos. 108-1 – 108-6].
- 11 • Deposition testimony of Microsoft employee Adam Lydick regarding aspects of the  
12 Camera application in the Windows Phone operating system. *See* Ex. G to the  
13 Balabanian Decl. [Dkt. No. 108-7].
- 14 • An internal Microsoft e-mail thread between Mr. Lydick, me, and others discussing  
15 the precise logic used to return a location fix to the Camera application. *See* Ex. H to  
16 the Balabanian Decl. [Dkt. No. 108-8].
- 17 • Plaintiff's Response in Opposition to Microsoft's Motion for Summary Judgment  
18 [Dkt. 105], which cites the material identified above.

19 4. ***Functional and Design Specifications.*** In my Declaration on the previous  
20 Motion to Seal, I explained the highly confidential nature of the functional and design  
21 specifications associated with location services technology in the Windows Phone 7. As a  
22 result, the Court has already sealed the functional and design specifications attached as Exhibits  
23 A, B, E, and F to the Balabanian Declaration [Dkt. 108-1, 108-2, 108-5, and 108-6]. The  
24 functional and design specifications attached as Exhibits C and D to the Balabanian Declaration  
25 [Dkt. 108-3, 108-4], however, have not previously been sealed by the Court. But these  
26 specifications are no different from those previously sealed: they contain technical details  
27 Microsoft does not share with competitors; they reveal the thought processes of Microsoft  
employees involved in developing the operating system, as well Microsoft's goals and  
objectives, and the feature scenarios for location services; and they would be highly valuable to  
any competitor seeking insight into how Windows Phone handles location requests. Further, the  
specifications have a legend on the first page, as follows:

1           **Microsoft Confidential:** © Microsoft Confidential: © 2009 Microsoft  
2           Corporation. All rights reserved. These materials are confidential to and  
3           maintained as a trade secret by Microsoft Corporation. Information in these  
4           materials is restricted to Microsoft authorized recipients only.

5           Each following page is also labeled “Microsoft Confidential.” Microsoft takes precautions to  
6           ensure these documents are not disclosed outside Microsoft. And within Microsoft, these  
7           specifications would be available only to a limited number of employees who have access to the  
8           Windows Phone SharePoint site. Only employees working in Windows Phone engineering, or  
9           who otherwise show a need, are granted access to materials collected in the SharePoint.

10           5.       **Lydick Deposition.** The exhibits to the Balabanian Declaration also include  
11           excerpts from the deposition testimony of Microsoft employee Adam Lydick regarding the  
12           behavior of the Camera application. *See* Ex. G to the Balabanian Decl. [Dkt. 109-7]. The Court  
13           has already ordered some of this testimony sealed, i.e., material at pages 48, 91, and 93. The  
14           other material redacted from Mr. Lydick’s deposition transcript, i.e., the material at pages 23  
15           through 27, discusses location issues at a level of generality likely to be familiar to users of the  
16           Camera application and to anyone versed in location services, and that testimony can be filed for  
17           public record without jeopardizing Microsoft’s competitive interests. Microsoft therefore has no  
18           objection to Plaintiff filing a redacted version of the excerpts from Mr. Lydick’s deposition  
19           testimony, obscuring only the information previously sealed, i.e., at pages 48, 91, and 93.

20           6.       **Internal Emails.** One exhibit to the Balabanian Declaration is a copy of an  
21           internal Microsoft email string. *See* Ex. H to the Balabanian Decl. [Dkt. 108-8]. The emails in  
22           this string relate to the development of Windows Phone 7.5—not Windows Phone 7—and they  
23           include a discussion between me and members of the Microsoft camera team concerning the  
24           logic used in resolving location requests from the Camera application. (Windows Phone 7.5 did  
25           not have the same issues with the Camera application as Windows Phone 7, i.e., it did not call  
26           location framework without user consent.) The general topic explored in these emails, i.e., the  
27           order in which the location framework resolves location requests, is not confidential. But the  
              emails also contain the specific queries used to generate location responses. As a result, they

1 contain competitively sensitive information that would be useful to Microsoft's competitors.  
2 (The one email Plaintiff cites in her brief, i.e., the email from me dated March 27, 2011, at 9:50  
3 p.m. could be unsealed without jeopardizing Microsoft's commercially sensitive information.)

4 7. ***Response to Summary Judgment Motion.*** I have carefully reviewed Plaintiff's  
5 Response in Opposition to Microsoft's Motion for Summary Judgment [Dkt. 105]. Although  
6 that Motion cites and describes functional and design specifications, it discusses Windows  
7 Phone 7's location services at such a high level of generality that the Motion can be filed for  
8 public record in its entirety. Having said that, the Response in Opposition to Microsoft's  
9 Motion for Summary Judgment contains factual misstatements or exaggerations concerning the  
10 location framework. I address some of these below.

#### 11 **MOTION FOR SUMMARY JUDGMENT**

12 8. ***Overview.*** In assisting Microsoft's lawyers in deciding what information we  
13 should ask the Court to seal, I carefully read Plaintiff's Response in Opposition to Microsoft's  
14 Motion for Summary Judgment [Dkt. 105]. I was struck not only by the dense explanations of  
15 the technology, which I attempted to explain in understandable terms in my earlier Declaration,  
16 but also by factual inaccuracies, apparently based on misunderstandings of Microsoft's technical  
17 documents. I am taking this opportunity to correct the most obvious inaccuracies.

18 9. ***"Background Scanners."*** Plaintiff refers to "recurrent" scans made by  
19 something she calls "Background Scanners." Resp. 4:12-18, 19:23-27. I am not familiar with  
20 the term "Background Scanners," but this term appears designed to imply that the Windows  
21 Phone 7 device makes "recurrent" scans for beacons in the "background," which it then uses to  
22 refresh tiles in RAM. But the technology does not work that way. As I explained in my earlier  
23 Declaration, the Windows Phone 7 device looks for nearby beacons (i.e., cell towers and WiFi  
24 access points) ***only*** "[w]hen an application sends a location request to the location framework."  
25 Dkt 91. ¶ 8. Without an application making a request for location, the location framework does  
26 nothing to determine what beacons are nearby. As a result, tiles are "refreshed and replaced"  
27 (Resp. 19:24 n.13) ***only*** in connection with an application's request for a location fix, not as the

1 result of “scanners” running in the “background.” (The only application that sometimes—for a  
2 period of several months—made calls to the location framework without prior user consent was  
3 the Camera application.) If Plaintiff intends to imply something different, she is wrong.

4       10.     ***Request for Tiles.*** Plaintiff inaccurately summarizes how and when the location  
5 framework downloads tiles. According to Plaintiff, if the location framework cannot resolve  
6 location on the device using data on tiles stored in RAM, it makes a “call to Orion ... for  
7 new/refreshed tile data matching Beacons visible to the device,” tries to resolve location through  
8 “additional tile data stored in flash memory,” and, if that fails, “waits for Orion to transmit  
9 additional tile data to the phone.” Resp. 5:4-8. The system does not work as she describes it.  
10 Instead, if location cannot be resolved in RAM, the location framework requests an approximate  
11 location, which Orion returns; it may then make a *second* request for tiles, which Orion also  
12 returns. In that scenario, the location framework resolves location from the location information  
13 Orion returns, not from the tile data; the tile data is returned for the user’s convenience so  
14 location framework can resolve future location requests efficiently using data *on the phone*,  
15 without communicating with the Orion location service. See Dkt. 91 ¶ 9 (explaining Orion  
16 “returns an approximate location to the location framework, which the framework returns to the  
17 requesting application” and also “returns ‘tiles’ to the location framework on the phone  
18 containing location information” for nearby beacons).

19       11.     ***Functionality.*** Plaintiff says “the functionality of the Location Framework/Orion  
20 ECS depends on comparisons between RAM-stored observations of ‘seen’ beacons and  
21 temporarily held tile Beacon data.” Resp. 13:7-9. I am not sure what Plaintiff means when she  
22 refers to “functionality of the Location Framework/Orion ECS” in this context, but the location  
23 framework (a software component on the phone) and the Orion location service (provided  
24 through Microsoft’s servers) function independently. (Indeed, Orion provides location services  
25 to clients other than Windows Phone, including Bing and Windows.) The location framework is  
26 the software component that, in response to a request from an application, originates a call from  
27 the phone to Orion, if needed, requesting location data. The Orion service returns data to the

1 location framework on the phone—in the form of an approximate current location and tiles  
2 containing data for beacons in the broader vicinity. The software on the phone then uses the  
3 data Orion supplies to resolve the current location request (through the approximate current  
4 location) and future requests (through the tiles in RAM) from applications on the phone. In  
5 other words, the Orion service furnishes the location framework with data, which figures into  
6 the logic the software uses to resolve location requests and then return results to the application.  
7 *See* Dkt. 91 ¶ 19.

8       12.     **Crowdsourcing.** In my earlier Declaration, I explained the conditions that have  
9 to exist before any location data is crowdsourced from a Windows Phone 7 device back to the  
10 Orion service. Dkt. 91 ¶¶ 16-18. As these requirements show, “Microsoft carefully limits its  
11 collection and transmission of crowd sourced observations to circumstances in which the  
12 observations can be uploaded to the Orion database with no material impact on the user in terms  
13 of consumption of power or bandwidth.” Dkt. 91 ¶ 21(b). Among other things, crowdsourcing  
14 occurs *only* as the result of an application’s request for a location fix (and subject to further  
15 conditions, as I previously explained), and the crowdsourcing data is anonymous. Although we  
16 now know the Camera application in Windows Phone 7 (unlike other applications) sometimes  
17 made location requests without prior user consent, the contribution of crowdsourced data as a  
18 result of the Camera application’s requests for location should have been insignificant. Other  
19 apps, such as Maps (and particularly the navigation function within Maps), generate far more  
20 location requests than Camera and therefore would generate far more anonymous crowdsourced  
21 data, which Orion then adds to its database to improve accuracy.

22       13.     **Backup.** Plaintiff says Microsoft “programmed Location Framework to back up  
23 tile data on WM7 devices for the benefit of both its users and Microsoft.” Resp. 17:23 n. 11.  
24 Microsoft does not “back up tile data.” The email referred to in that footnote explains how the  
25 location framework resolves an application’s location request in the absence of a data  
26 connection, i.e., if location framework could not make a call to Orion. In that event, the  
27 software would indeed look to the tiles stored in RAM—just as it would if there *were* a data

1 connection. The data in RAM is not in any sense "backup data"; it is instead the data on the  
2 phone the software looks to first as the most efficient means of resolving a location request.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 EXECUTED this 16 day of January, 2014, at Redmond, Washington.

5 

6 Cristina del Amo Casado

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 17th day of January, 2014.

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